IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 571 of 2007

Judgement reserved on:

Date of decision: 13.9.2007.

State of H.P. **…..Petitioner- Appellant.**

Vs.

Ishwar Singh **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. M.L.Chauhan, Addl. Advocate General.

For the Respondents :

Kuldip Singh, Judge (Oral).

This is an application of the State for grant of leave to file an appeal against judgement of acquittal, dated 1.12.2006, passed by the learned Judicial Magistrate, Barsar, Distt. Hamirpur, in case No. 145-1-2005/3-II-2006.

2. The accused was sent for trial for having committed an offence, punishable under Sections 448, 323, 427 & 506 IPC. The prosecution case is that Baldev Singh accompanied by Priya Darshan on 2.10.2005 lodged the report that lock of his shop was broken and belongings of the shop were thrown outside by the accused. On this FIR Ex. PW 3/A was registered at

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Whether the reporters of the local papers may be allowed to see the Judgment?

Police Station, Barsar, Priya Darshan was medically examined, vide MLC Ex. PW 1/A. After completion of investigation, challan was put up against the accused and he was charged, under Sections 448, 323, 447 and 506 IPC. He pleaded not guilty. The prosecution examined nine witnesses. The accused was examined, under Section 313 Cr.P.C. As per accused, he has been falsely implicated in the case. The accused did not lead any evidence in defence. The learned Judicial Magistrate acquitted the accused. Hence, the State has filed the application for leave to file an appeal.

3. Heard and gone through the record. PW 1 Dr. Manisha Mahajan has proved MLC Ex. PW 1/A of Priya Darshan. In cross-examination, she has stated that if a person strikes with a hard surface, then the injuries mentioned in the MLC Ex. PW 1/A are possible. PW 2 Hira Singh has stated that 2-3 years ago, a dispute had arisen in between Ishwar Dass and Baldev etc., police came on the spot. In cross-examination, he has stated that his statement that there was a dispute is hear say only. PW 3 Baldev Singh has stated that he had constructed five shops and karyana articles valuing rupees two lacks were kept in those shops. On 1.10.2005, his brother Amar Nath told him that accused has broken open the lock and thrown out the articles of the shop causing him loss of Rs. 35000-40000, his brother Priya Darshan was given Danda blow. Ishwar Dass had brought 30-35 persons on the spot and accused had constructed wall closing the shop No. 4. He lodged FIR Ex. PW 3/A. The accused took possession of shop No. 4. The accused had brought 3-4 trolleys. In cross-examination, he has admitted that in his

presence no articles were thrown out and his statement is based on hear say.

4. PW 4 Amar Nath has stated that Baldev Singh is his brother. On 1.10.2005, he came to know that some persons under the influence of liquor were making noise outside the shop of Baldev Singh. Ishwar Dass and his father broke open the lock of the shutter. Ravi gave Danda blow on the back of Priya Darshan. There were 20-25 persons, who started throwing shop articles outside. He has also stated that Priya Darshan is his brother. PW 5 Babu Ram has stated that on 1.10.2005, about 30-35 persons gathered near the shops of Baldev Singh. On spot Ishwar Dass and his party was present. Ishwar Dass gave Danda blow to the son of Baldev's brother. In cross-examination, he has repeated that there were 30-35 persons on the spot on one side and two persons namely Amar Nath and Priya Darshan on the other.

5. PW 6 Amar Nath has stated that Ishwar Dass and other persons present on the spot were removing the articles from the shop of Baldev Singh. In cross-examination, he has shown his inability to name the persons, who were present there. PW 8 Priya Darshan has stated that 30-35 persons had thrown the articles from the shop of Baldev Singh on 1.10.2005. He was given Danda blow on his back by the accused. PW 9 ASI Chhota Ram in cross-examination has stated that accused Ishwar Dass is also owner of the shop and the land is jointly owned by the parties.

6. The prosecution story is that about 30-35 persons had thrown the shop articles of Baldev Singh, but only accused was

prosecuted. No recovery of shop articles, broken lock etc. was made. PW 9 has admitted that accused is also owner of the shop and the land is jointly owned by the parties. PW 1 Dr. Manisha Mahajan has stated that injuries shown in MLC Ex. PW 1/A could be caused by fall. There are material contradictions in the statements of the prosecution witnesses. The learned Magistrate has taken a possible view from the material on record. This is not a fit case for grant of leave to file an appeal. Hence, the leave is rejected.

September 13, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**